

Doc # 20024191
Page 1 of 14
Date: 7/31/2002 03:17P
Filed by: GENERAL PUBLIC
Filed & Recorded in Official Records
of COUNTY OF DEL NORTE
VICKI L. FRAZIER
COUNTY CLERK-RECORDER
Fee: \$0.00

RECORDED AT THE REQUEST OF:

County of Del Norte

WHEN RECORDED, MAIL TO:

Barbara J. Cook, P.E., Chief
Department of Toxic Substances Control
Northern California – Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

No fee for recording per Government Code §27283

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

COVENANT TO RESTRICT USE OF PROPERTY
(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION (Civil Code section 1471(c))

(Re: Del Norte Pesticide Storage Area @ 2650 Washington Boulevard,
Crescent City, Del Norte County, California, Parcel #'s 120-020-36)

DOCUMENT TITLE

Document requires re-recording due to the lack of signature by Barbara J. Cook, prior to the April 17, 2002 original date of recording. Ms. Cook did not execute document until May 6, 2002.

RECORDING REQUESTED BY:)
County of Del Norte)

WHEN RECORDED, MAIL TO:)

Barbara J. Cook, P.E., Chief)
Department of Toxic Substances Control)
Northern California - Coastal)
Cleanup Operations Branch)
700 Heinz Avenue, Suite 200)
Berkeley, California 94710-2721)

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION (Civil Code section 1471(c))

(Re: Del Norte Pesticide Storage Area @ 2650 Washington Boulevard,
Crescent City, Del Norte County, California, Parcel #s: 120-020-36)

This Covenant and Agreement ("Covenant") is made by and between the County of Del Norte, a county of the State of California (the "Covenantor"), the current owner of property situated near the community of Crescent City, County of Del Norte, State of California, described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the California Department of Toxic Substances Control ("the Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of a hazardous material as defined in Health and Safety Code ("HSC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471(c) and HSC section 25355.5 that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of the U.S. Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

-ARTICLE I
STATEMENT OF FACTS

1.01. The Property is owned by the County of Del Norte and is more particularly described and depicted in Exhibit "A". An area overlying groundwater contaminated by 1,2-Dichloropropane is within the Property. The Property is more specifically described as Del Norte County Assessor's Parcel Number: 120-020-36.

1.02. A hazardous substance, as defined in HSC section 25316; section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601(14); and 40 Code of Federal Regulations ("C.F.R.") §§ 261.3 and 302.4 remains on portions of the Property.

1.03. U.S. EPA has been remediating the Property. The Property is part of the Del Norte County Pesticide Storage Area National Priorities List (NPL) site (Site ID No. 0900923; CERCLIS: CAD000626176) and is being remediated pursuant to a Record of Decision and an Amendment to the Record of Decision pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. Sections 9601 et seq., and with the National Contingency Plan (40 C.F.R. Part 300), administered by the U.S. EPA. The U.S. EPA circulated the Remedial Investigation Report, Feasibility Study and Proposed Plan for public review and comment. The Record of Decision was approved by U.S. EPA on September 30, 1985 and identified excavation and off-site disposal of contaminated soil and extraction and treatment of contaminated groundwater as primary components of the remedy. Contaminated soil has been remediated as required by the Record of Decision. A groundwater extraction and treatment system operated continuously from April 1990 to December 1994. There were two shutdowns of approximately six-months duration in 1995 and 1996 and the groundwater and extraction system was permanently shut down in October 1997. The purpose of the shutdowns was to determine the effect on mass removal and contaminant concentrations. U.S. EPA ultimately concluded that the observed rate of contaminant reduction was the same whether or not the groundwater extraction and treatment system was operating. This conclusion lead to U.S. EPA approving the Amendment to the Record of Decision on August 29, 2000 that changed the groundwater part of the remedy from extraction and treatment to containment through natural attenuation with semi-annual sampling of selected groundwater monitoring wells. Semi-annual groundwater sampling performed since system operation was discontinued indicates that concentrations of 1,2-Dichloropropane are declining slowly. Because 1,2-Dichloropropane, a hazardous substance, as defined in HSC section 25316 and a hazardous material as defined in HSC section 25260, will continue to remain in groundwater under portions of the Property, the Amendment to the Record of Decision provides that institutional controls to prevent human exposure to contaminated groundwater be required as part of the site remediation.

1.04. The restrictions set forth in this Covenant are necessary to preclude potential future human exposure to 1,2-Dichloropropane.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to, or an ownership interest in, all or any portion of the Property.

2.04. Occupant. "Occupant" means any Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA is the CERCLA Lead Agency at the time of the recording of this instrument.

2.06. Covenantor. "Covenantor" means the County of Del Norte, and includes its successors, if any.

2.07. Groundwater monitoring wells. "Groundwater monitoring wells" means the wells that are to remain on the Property as required by the Amendment to the Record of Decision. These wells include four groundwater monitoring wells, MW-26, MW-104, MW-105, and MW-107, and two former extraction wells, PW-101 and PW-201.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to HSC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and enforceable by the Department; (d) is for the benefit of U.S. EPA as a third party beneficiary; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

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3.02. Binding upon Owners/Occupants. The Covenantor and all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department and U.S. EPA. Pursuant to HSC section 25355.5, this Covenant binds all owners and occupants of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03. Written Notice of the Presence of Hazardous Substances. At least 30 days prior to the sale, lease, sublease, rental, assignment, other transfer, or conveyance of any interest in the Property or any portion thereof, including fee interests, leasehold interests, and mortgage interests, the owner, lessor, assignor, or other transferor shall give the buyer, lessee, assignee, or other transferee written notice that a hazardous substance is located on or beneath the Property and notice of this Covenant that confers a right of access to the Property and that confers a right to enforce restrictions on the use of the Property and obligations associated with the Property as set forth in Article IV of this Covenant.

3.04. Incorporation into Deeds, Leases, and Subleases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, subleases, rental agreements, assignments, or other transfers of all or any portion of the Property which are hereafter executed or renewed. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE PUBLIC LAND RECORDS ON __[DATE]__, IN BOOK ____, PAGE ____, IN FAVOR OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND FOR THE BENEFIT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

3.05. Conveyance of Property. The Owner shall provide notice to the Department and to U.S. EPA not later than thirty (30) days before any conveyance or other transfer of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and U.S. EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect a proposed conveyance or transfer, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS AND OBLIGATIONS

4.01. Prohibited Uses. Future use of the Property shall be restricted to industrial and/or commercial use only, and the Property shall not be used for any of the following purposes:

- (a) A residence, including but not limited to any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Non-Interference with Groundwater Monitoring Wells and Contaminated Groundwater. Covenantor agrees:

- (a) Installation and/or pumping of any water-producing wells, including but not limited to water supply, irrigation, or private wells shall not be permitted on the Property.
- (b) Use of contaminated groundwater shall be prohibited.
- (c) Activities that may damage or compromise the integrity of groundwater monitoring wells shall not be permitted.
- (d) Groundwater monitoring wells shall be maintained and protected from physical damage.
- (e) Groundwater monitoring wells shall not be altered or destroyed without prior written approval by the Department.

4.03. Soil Management. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed in accordance with all applicable provisions of state and federal law, and will not be removed from the Property without following a Soil Management Plan approved by the Department.

4.04. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, periodic reviews, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety or the environment. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions under CERCLA, the National Contingency Plan, 40 C.F.R. Part 300 and its successor provisions, or federal law. Nothing in this instrument shall limit or otherwise affect the Department's right of entry and access under any statutory provision.

4.05. Access for Implementing Groundwater Monitoring. The entity or person responsible for implementing groundwater monitoring and maintenance of groundwater monitoring wells shall have reasonable right of entry and access to the Property for the purpose of implementing these monitoring and maintenance activities. Such right of entry and access shall continue until such time as the Department determines that such activities are no longer required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. The Department shall be entitled to enforce the terms of this instrument by resort to filing of an administrative, civil, or criminal action, as provided by law or equity, against the Owner(s) and/or Occupant(s). This Covenant shall be enforceable by the Department pursuant to Health and Safety Code, Division 20, Chapter 6.5, Article 8 (commencing with section 25180). Failure of the Covenantor, Owner, or Occupants to comply with any provision of Paragraphs 4.01 through 4.04 of this Covenant shall be grounds for the Department to require that the Covenantor, Owner or Occupants modify or remove, as appropriate, any improvements constructed or placed upon any portion of the Property in violation of the Restrictions. ("Improvements" herein shall include, but not be limited to, all buildings, roads, driveways, and paved parking areas). All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA, and violation of this Covenant shall be grounds for the Department or U.S. EPA to file civil or criminal actions, as provided by law or equity.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with HSC section 25233. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no variance may be granted under this paragraph without prior review and prior concurrence with the variance by U.S. EPA. If requested by the Department or U.S. EPA, any approved variance shall be recorded in the land records by the person or entity granted the variance.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with HSC section 25234. Unless and until the State of California assumes CERCLA Lead Agency responsibility for groundwater monitoring, no termination may be granted under this Paragraph 6.02 without prior review and prior written concurrence of the termination by U.S. EPA.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, after review and prior written concurrence by U.S. EPA, this Covenant shall continue in effect in perpetuity.

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ARTICLE VII
MISCELLANEOUS

7.01. No Dedication or Taking. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under state or federal law.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Del Norte within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Director of Community Development
 County of Del Norte
 Crescent City, California 95531

 County Counsel
 County of Del Norte
 981 H Street, Suite 220
 Crescent City, California 95531

To DTSC: Barbara J. Cook, P.E., Chief
 Department of Toxic Substances Control
 Northern California-Coastal Cleanup Operations Branch
 700 Heinz Avenue, Suite 200
 Berkeley, California 94710-2721

To U.S. EPA: Beatriz Bofill
 Superfund Division (SFD-7-3)
 U.S. EPA, Region IX
 75 Hawthorne Street
 San Francisco, California 94105-3901
 Re: Del County Pesticide Storage Area Superfund Site

and:

 Bethany Dreyfus, Esq.
 Office of Regional Counsel, ORC-3
 U.S. EPA, Region IX
 75 Hawthorne Street

San Francisco, California 94105-3901
Re: Del County Pesticide Storage Area Superfund Site

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

In the event that the identity of any Owner or Occupant of the Property should change, the new Owner or Occupant shall notify the Department and U.S. EPA, within ten (10) days of becoming an Owner or Occupant of the Property. In the event that the address of any Owner or Occupant of the Property should change, the Owner or Occupant whose address changed shall notify the Department and U.S. EPA within ten (10) days of its change of address.

7.04. Partial Invalidity. If any portion of the Restrictions or other term set forth herein, or the application of it to any person or circumstance, is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant, or the application of such portions to persons or circumstances other than those to which it is found to be invalid, shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

7.06. Third Party Beneficiary. U.S. EPA's rights as a third party beneficiary of this Covenant shall be construed pursuant to principles of contract law under the statutory and common law of the State of California

7.07. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: County of Del Norte

By: Chuck Blackburn

Chuck Blackburn

Chair of the Del Norte County Board of Supervisors

Date: 4/17/2002

Department of Toxic Substances Control

By: Barbara J Cook

Date: 5/6/2002

Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch

STATE OF CALIFORNIA

COUNTY OF DEL NORTE

On this 17th day of APRIL, in the year 2002,

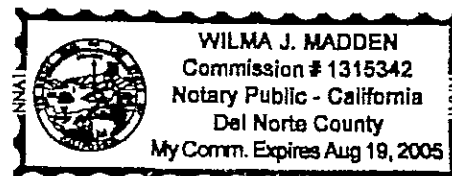
before me WILMA J. MADDEN, NOTARY PUBLIC, personally appeared

CHUCK BLACKBURN

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Wilma J. Madden



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ALL-PURPOSE ACKNOWLEDGMENT



State of California

County of

ALAMEDA

SS.

On

5/6/02

(DATE)

before me,

Frank Piscitelli

(NOTARY)

personally appeared

BARBARA Jean Cook

SIGNER(S)

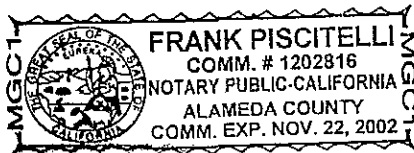


personally known to me

- OR -



proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]

NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

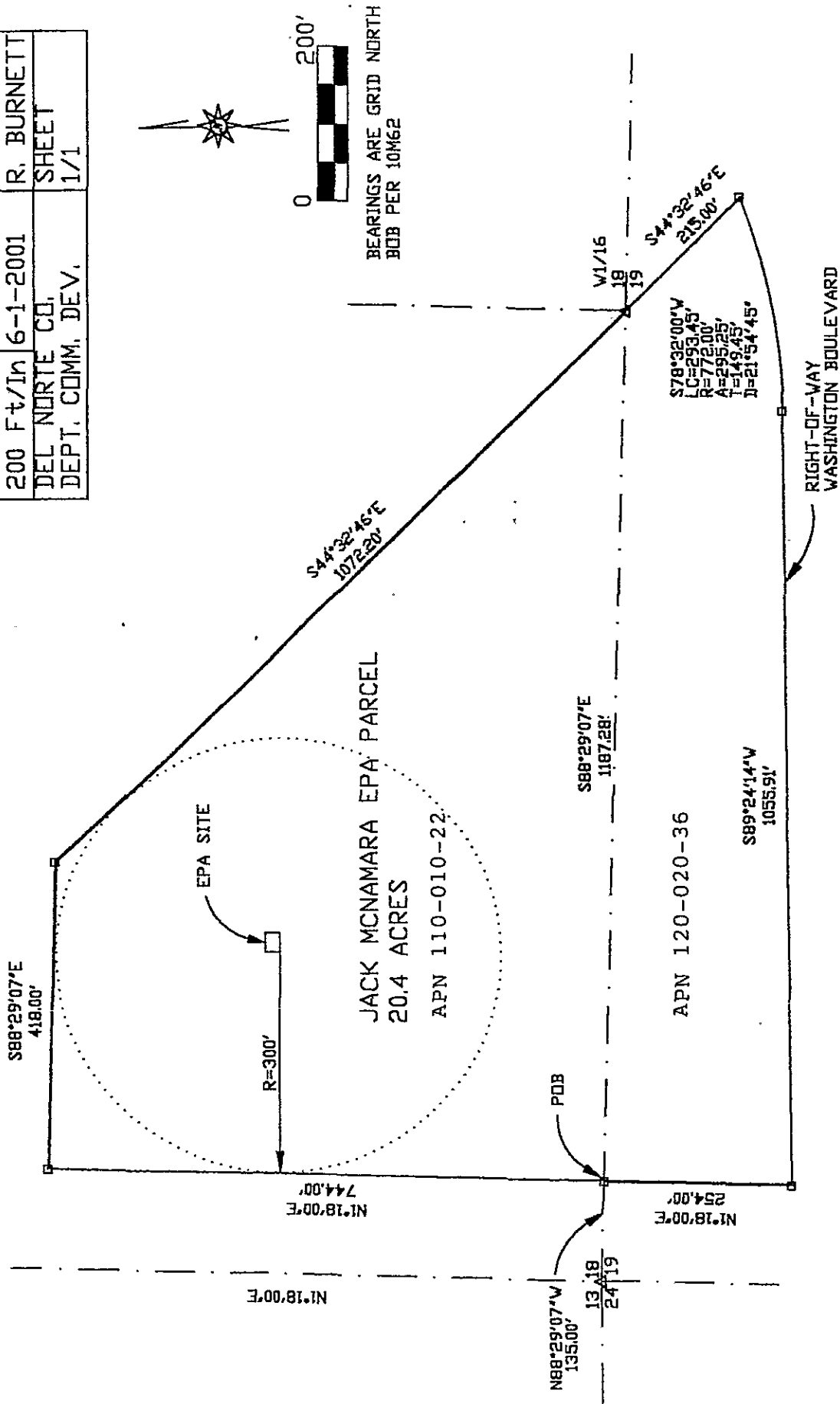
SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

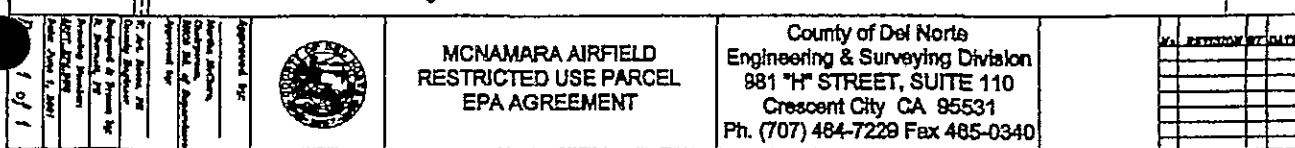
OTHER

EXHIBIT A

JACK MCNAMARA EPA PARCEL			
ARPT EPA TRV.DWG	DATE	DRAWN BY	
SCALE 200 Ft/In	6-1-2001	R. BURNETT	
DEL NORTE CO.		SHEET	
DEPT. COMM. DEV.		1/1	



Legal Description EPA_GRID 1)
 The True Point of Beginning bears S88°29'07"E 1055.00 Feet from the SECTION CORNER 13/18/19/84, thence N1°18'00"E for 744.000 Feet, thence S88°29'07"E for 418.000 Feet, thence S44°32'46"E for 1072.200 Feet to the V1/16 SECTION 10/19, thence S44°32'46"E for 215.000 Feet to the approximate northerly right-of-way of Washington Boulevard, thence along said right-of-way, 772.000 Feet radius curve to the Right Chord bears S78°32'00"W 293.43' thence S89°24'14"W for 1055.911 Feet along the approximate northerly right-of-way to a point S1°18'00"W for 254.000 Feet from the True Point of Beginning.



County of Del Norte
Engineering & Surveying Division
881 "H" STREET, SUITE 110
Crescent City CA 95531
Ph. (707) 484-7229 Fax 485-0340